WONG YOON YAR v. LIN YIN THAI & ORS.

[S.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) February 9 & July 18, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 232 of 1986]

Landlord and Tenant – Controlled premises – Tenancy terminated by notice to quit – Death of tenant – Tenant trading under style of a chop name – Firm assigned – Whether tenancy of premises assigned – Control of Rent Act, 1966.

Chop – Legal status of firm or "chop" tenant – Observations on.

In this case the respondents, the registered proprietors of the premises, had let part of the premises to one Wong Kai How, trading under the style of Lean Hing. On December 31, 1972, the respondents terminated the tenancy of Wong Kai How, who subsequently died on February 13, 1977. Since his death the appellant had been occupying the portion of the premises let to the deceased. The respondents alleged that the appellant was a trespasser. Despite due notice, the appellant refused to vacate the premises. The respondents claimed possession of the premises. In his defence the appellant claimed that the deceased had assigned the firm to him and consequently the tenancy of the premises was assigned to him and he was thus the lawful tenant. The learned Magistrate gave judgment for the respondents and the appeal of the appellant to the High Court was dismissed. The appellant appealed to the Supreme Court.

Held, dismissing the appeal: (1) although there had been an assignment of the business it has not been established that there has also been an assignment of the tenancy. The landlords have not been shown to have given their consent;

(2) on the death of the deceased the tenancy came to an end. The appellant cannot claim to be a member of the deceased's family and to be entitled to protection under the Control of Rent Act, 1966;

(3) as the tenancy was lawfully terminated while the tenant was still alive, whatever interest the appellant had in the tenancy also ceased at that moment.

Cases referred to:

(1) *Ling Mee Guk* v. *Hon Chiam* [1958] S.C.R. 29.
(2) *Algappa Chettiar* v. *Kader & Ors.* [1939] M.L.J. 304.

SUPREME COURT.

Lim Seong Chun for the appellant.

Chin Fook Yen for the respondents.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): The respondents/plaintiffs are the registered proprietors of the premises known as No. 22, Main Road, Pusing, and Wong Kai How, trading under the style of Lean Hing, was the tenant occupying the whole ground floor, two rooms and a store room on the top floor at a monthly rent of $70.00. On December 31, 1972, the respondents terminated the tenancy of Wong Kai How who passed away on February 13, 1977. Since his death the appellant/defendant had been occupying that portion of the premises leased to the deceased. The respondents alleged that the appellant is a trespasser. Despite due notice, the appellant refused to vacate that portion of the premises.

In his defence the appellant claimed that the tenancy had been assigned to him since 1969. He is therefore the lawful tenant. He maintained that the alleged termination of the tenancy did not affect him. Alternatively, he said that the notice was bad as no breach of the tenancy had occurred. He relied on the facts that the deceased was the sole proprietor of the firm and that the receipts were issued in the name of the firm and not that of the deceased to show that the firm was the tenant. The deceased had assigned the firm to him with effect from January 1, 1969, as evidenced by the Registration of Changes in Business (D.42). Consequently, the tenancy of the premises was assigned to him and he is thus the lawful tenant.

There is no dispute that the premises are controlled premises and the provisions of the Control of Rent Act, 1966 apply. The issue was whether the appellant was the tenant of the respondents in the circumstances.

The learned magistrate dealt with the matter very carefully. He expressed his view that the respondents leased the premises to the deceased and not to the firm. At page 29 of the Appeal Record he stated correctly that:

> ". . . . According to the definition 'Tenant' in Control of Rent Act 1966, it does not include a firm. A firm has no legal personality and cannot be a tenant. As such I am satisfied on a balance of probabilities that the actual tenant is one Wong Kai How and not Lean Hing as a firm."

Consequently, he gave judgment for the respondents and ordered the appellant to vacate the premises on or before March 31, 1982, and to pay double rent at $140.00 per month from April 1, 1977, to date of possession. The learned Judge dismissed the appellant's appeal.

Before us the appellant advanced the same

arguments as in the lower courts. He says he is a lawful tenant, not a trespasser. He was put there by the deceased so at least he is a licensee. He was a nephew of the deceased and is, therefore, of the deceased's family. According to the respondents they entered into an oral agreement with the deceased sometime in 1953. Appellant assisted his uncle in the business. It was not until April 1972 that respondents knew about the assignment. Since then they refused to accept rentals tendered either directly or by appellant's solicitor as they did not regard the appellant as their tenant.

Although there has been an assignment of business it has not been established that there has also been an assignment of tenancy. The landlords have not been shown to have given their consent. Once they were aware of the assignment they served a notice to quit on the appellant on April 27 as being a trespasser. (See page 11 of the Appeal Record). Also, on the death of the deceased the tenancy came to an end. The deceased had a son who was staying in a shophouse across the road. So, the appellant cannot claim to be a dependant of the deceased. He cannot claim to be a member of the deceased's family and to be entitled to the protection under the Control of Rent Act, 1966.

On the death of the deceased the tenancy vested in his executor or administrator in the usual way. If he died intestate the tenancy vested in the Probate Officer or the personal representative of the deceased. No order for the recovery of possession should be made until the contractual tenancy had been properly terminated: *Ling Mee Guk* v. *Hon Chiam*[1] and *Alagappa Chettiar* v. *Kader & Ors.*[2] In this case the respondents terminated the tenancy on December 31, 1972, when the deceased was still alive. Whatever interest the appellant had in the tenancy also ceased at that moment. There can be no doubt that the appellant was put in occupation by the deceased. Appellant contended that he was there as a licensee. As the tenancy was lawfully determined when the tenant was still alive the landlords could in law maintain any action of trespass against any party in occupation by the tenant's leave and licence. In other words, when the tenancy was lawfully determined the licensee would have no leg to stand.

We would like to make one observation on the legal status of a firm or "chop" tenant as loosely described by many in the country. There is still a popular misconception prevalent amongst illiterate tradesmen in the country that a firm or "chop" is an entity. That is not so. Unlike a company registered under the Companies Act which is itself a legal entity, a firm or "chop" although it may be registered under other legislation is nothing more than a convenient name or label for a number of persons carrying on a business in a partnership or for that matter for a sole proprietor carrying on a business. Those persons could use their own individual names if they wished followed by some such words as "trading under the style of" whenever they transacted any business. But this might well be inconvenient, especially if there were numerous partners. The obvious solution is to select one short name to include all partners. That is the "chop" name. The same situation applies to a sole proprietor. He may not wish to carry on business in his own name but prefer to choose something more colourful or meaningful to bring luck and prosperity to his business. So, he chooses a "chop" name and trades under that. But he does not by so doing create an entity separate from himself. He retains just the same liabilities and obligations in regard to his business and to his tenancy and enjoys just the same amount of protection under the Control of Rent Act whether he trades in his own name or that of a "chop" name.

Like the learned Judge we find no reason to interfere with the decision of the learned magistrate. We would dismiss the appeal with costs here and the court below. Deposit to respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Lim Seong Chun & Co. ; Chin Fook Yen & Co.*